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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LYLE JAMES OLIER,

Defendant and Appellant.

D048450

(Super. Ct. No. SCD193379)

APPEAL from an order of the Superior Court of San Diego County, Charles G. Rogers, Judge. Affirmed.

Lyle Olier pled guilty to receiving stolen property. (Pen. Code,¹ § 496d.) The court suspended sentence, and placed Olier on probation subject to numerous conditions, including that he pay victim restitution of \$5,700. (§ 1203.1.) As his sole contention on appeal, Olier contends the court abused its discretion in requiring him to pay restitution. We reject Olier's contention and affirm.

¹ All further statutory references are to the Penal Code unless otherwise specified.

FACTUAL AND PROCEDURAL SUMMARY

Because there was no trial or preliminary hearing, we base our factual summary on information in the probation officer's report, and on statements made by Olier's counsel at the sentencing hearing.

An Acura Integra vehicle was stolen from its owner. Witnesses later observed several males in an alley removing the Acura from a trailer attached to a Chevrolet Suburban and abandoning it. The Acura had been "stripped" and was not operable. When police arrived at the scene, they found John Pross sitting inside the Suburban about one block from where the Acura had been left. Olier was standing nearby, outside of his mother's house. The officers arrested Pross for vehicle theft.

After receiving permission to search Olier's mother's home, police officers found methamphetamine inside Olier's room, and arrested him for possessing a controlled substance. Olier admitted that he helped Pross "dump" the stolen Acura in the alley. Olier also said that about two weeks earlier, Pross had taken him to a house in the Spring Valley area to buy methamphetamine, and he saw several vehicles in various stages of being stripped in the backyard of this Spring Valley home. Olier knew one of the individuals who lived there. Pross told Olier that one of the vehicles in the backyard was stolen.

Based on the statements of Olier and Pross, police officers executed a search warrant at the Spring Valley home and were successful in recovering five stolen vehicles and methamphetamine.

Olier was charged with receiving stolen property (§ 496d) and unlawful taking and driving of a vehicle (Veh. Code, § 10851, subd. (a)). As part of a plea bargain, Olier pled guilty to the receiving stolen property count, and, in exchange, the district attorney dismissed the unlawful taking/driving count with a *Harvey* waiver. (*People v. Harvey* (1979) 25 Cal.3d 754.)

The probation officer recommended that Olier be given probation with numerous conditions, including victim restitution in the amount of \$5,700 (the appraised value of the Acura vehicle) plus \$1,200 for personal property that had been in the vehicle.

At the initial hearing, the prosecutor said she was not requesting restitution for the personal property, but was seeking restitution for the value of the Acura. The prosecutor said that restitution was appropriate because the damages to the vehicle had a nexus to Olier's criminal conduct and restitution would promote rehabilitation by making Olier understand the practical impact of his participation in the stolen property scheme.

At a later hearing, Olier's counsel objected to the restitution condition because Olier's conduct did not cause any damage to the vehicle. Counsel stated that "all the information that has been provided to law enforcement . . . is that the vehicle came into my client's possession in a fully stripped fashion. My client was not any member of a conspiracy to engage in an auto theft ring. He was essentially approached after the theft had already occurred and the stripping of the vehicle had already occurred and was asked—and he agreed—to dump it." Counsel also emphasized the facts showing that Olier cooperated with the police and assisted them in locating the chop shop where the Acura had likely been stripped.

The court rejected Olier's arguments that the restitution condition could not be imposed because Olier did not personally cause the damage to the vehicle. The court explained that Olier's conduct had a sufficient nexus to the damages to support the restitution order because Olier was a participant in the overall criminal scheme involving the stealing, stripping, and dumping of the vehicle. The court noted that Olier "knew more about this chain [of criminal conduct]. He knew where to go, he knew where [the stolen vehicle] came from, he knew where the car was. . . . [¶] . . . [¶] [Olier received the] stolen property in [a stripped condition] and . . . should be liable because everyone who touched that car [i]s part of the ring" The court thus imposed a restitution condition of \$5,700. The court ordered that Olier and his codefendant Pross were jointly and severally liable for this amount.

DISCUSSION

Olier contends the court abused its discretion in requiring him to pay for damages to the Acura because his criminal involvement occurred after the vehicle had been damaged.

The restitution order was a probation condition under section 1203.1. Under this statute, "courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety" (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120-1121.) A probation condition "'will not be held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality'" (*People v. Jungers* (2005) 127 Cal.App.4th 698, 702.) Under these

principles, a restitution condition is proper if it is "reasonably related *either* to the crime of which the defendant is convicted *or* to the goal of deterring future criminality."

(*People v. Carbajal*, *supra*, 10 Cal.4th at p. 1123, italics added; accord *In re I. M.* (2005) 125 Cal.App.4th 1195, 1209-1210.) A trial court's determination that a restitution order satisfies these factors is entitled to substantial deference and must be upheld unless the court's determination was "arbitrary or capricious," and exceeds the "' "bounds of reason.'" (*People v. Carbajal*, *supra*, at p. 1121.)

In this case, the trial court had a reasonable basis to conclude the restitution was reasonably related to Olier's criminal conduct. Olier was in possession of the Acura, knowing it had been stolen and stripped, and then assisted in "dumping" the vehicle at a separate location so it would not be connected to the criminal enterprise. Olier admitted to police that he knew of the individuals who were engaged in the stripping of stolen vehicles, and had been at the Spring Valley home where this enterprise took place. Olier's involvement in the stolen vehicle enterprise, and his criminal conduct in receiving and then abandoning the vehicle, was substantially related to the destruction of the vehicle, and thus Olier could be required to pay for this damage.

Olier contends there was an insufficient nexus because he did not personally cause the damage to the car. However, restitution as a probation condition is not dependent on a finding that the defendant was the cause of the loss. (*In re I. M.*, *supra*, 125

Cal.App.4th at pp. 1209-1210.)² "That a defendant was not personally or immediately responsible for the victim's loss does not render an order of restitution improper. . . . [T]he question simply is whether the order is reasonably related to the crime of which the defendant was convicted or to future criminality." (*Id.* at p. 1209; see *People v. Carbajal*, *supra*, 10 Cal.4th at pp. 1123-1124.)

Olier's reliance on *People v. Scroggins* (1987) 191 Cal.App.3d 502 to support a causation requirement is misplaced. In *Scroggins*, the defendant pled guilty to receiving stolen property. (*Id.* at p. 504.) The stolen property items found in his possession were later returned to the owners. (*Id.* at p. 506.) The trial court nonetheless ordered the defendant to pay restitution for the value of other missing property from the same victims that had not been found in his possession. (*Id.* at p. 504.) In holding this restitution order was improper, this court relied on a California Supreme Court decision, *People v. Richards* (1976) 17 Cal.3d 614, 619-620, that narrowly construed a trial court's authority to impose restitution for damages that were not specifically caused by the defendant's criminal conduct. (*Scroggins, supra*, 191 Cal.App.3d at pp. 506-507.) In particular, we noted that *Richards* had concluded that if a restitution order requires payment for a loss that was not caused by the conduct for which the defendant was convicted, the order does

² Olier contends *In re I.M.* is not controlling here because it is a juvenile case, and "probation conditions in juvenile cases can be broader than in adult cases." However, the *In re I.M.* court did not base its analysis of the probation condition on the fact it was a juvenile case. (*In re I.M., supra*, 125 Cal.App.4th at pp. 1209-1210.) The court interpreted the identical statute before us, section 1203.1, and relied on the judicial decisions construing this statute.

not serve a rehabilitative purpose " 'unless the act for which the defendant is ordered to make restitution was committed with the same state of mind as the offense of which he was convicted. . . .'" (*Scroggins, supra*, at p. 506, quoting *Richards, supra*, 17 Cal.3d at p. 622.)

In *Carbajal*, the California Supreme Court expressly disapproved this language in *Richards*, and, in so doing, made clear the broad scope of a court's discretion to order restitution to meet statutory goals of requiring a defendant to "make amends 'to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer.'" (*People v. Carbajal, supra*, 10 Cal.4th at p. 1126.) Although the specific issue in *Carbajal* concerned a court's discretion to order restitution when the defendant's *noncriminal* conduct caused the victim's damages, the essence of the *Carbajal* court's reasoning, and its discussion of *Richards*, was to disapprove a restrictive view of the required nexus between the criminal conduct and the victim's losses to justify a restitution order. (*Id.* at pp. 1126-1127; see *In re I. M., supra*, 125 Cal.App.4th at pp. 1209-1210.)

Based on *Carbajal*, we conclude *Scroggins* is no longer controlling to the extent it held a court has no discretion to order restitution if the defendant's conduct was not the actual cause of the victim's losses. (*People v. Scroggins, supra*, 191 Cal.App.3d at pp. 505-506.) Moreover, *Scroggins* is unhelpful here because it is factually distinguishable. In *Scroggins*, the defendant was charged with receiving stolen property items that were later returned to their rightful owners. The court nevertheless ordered the defendant to pay restitution for *other* items of property that had been stolen from the same apartment

units, although the defendant had not been charged with or found to be criminally responsible for these losses. (*Id.* at pp. 504, 506.)

Unlike *Scroggins*, in this case, the trial court ordered Olier to pay restitution for damages to the vehicle that he admittedly possessed, knowing it was stolen, for the purpose of assisting those who had stolen, stripped, and damaged it. The trial court found that Olier was involved in the chain of criminal activity that resulted in the damages to the Acura. The fact that Olier was at the end of the chain does not render the court's conclusion unsupported. (See *In re I. M.*, *supra*, 125 Cal.App.4th at pp. 1208-1210 [upholding probation condition requiring juvenile to pay funeral expense of murder victim, even though juvenile's sole participation in the crime was after the murder took place].)

We alternatively conclude the court's order was proper under its authority to impose restitution to prevent future criminality. (See *People v. Carbajal*, *supra*, 10 Cal.4th at p. 1123; *In re I. M.*, *supra*, 125 Cal.App.4th at p. 1210.) In supporting the restitution request, the prosecutor focused on the rehabilitative aspect of the proposed order, stating that "being ordered to pay \$5,700 as restitution to the owner of that vehicle is entirely reasonable and arguably helpful to the defendant's rehabilitation. Because every time he pays \$25 per month, he should be thinking I shouldn't do drugs and I shouldn't come into possession of stolen cars." The court's remarks reflect that the court agreed with this argument and believed it appropriate to impose the restitution to further Olier's rehabilitation. This was a reasonable conclusion, particularly given that Olier had no criminal history. To preclude any possibility of Olier beginning a criminal career, the

court could reasonably find that it was important to impress upon Olier the practical impact of his conduct on victims, and to dissuade him from further involvement with criminal behavior.

Olier argues this rehabilitative goal was not a "viable factor" because he pled guilty early in the proceedings, cooperated with the police, and was instrumental in "shut[ting] down the chop shop from which the car he was involved with apparently came." However, the trial court had the discretion to weigh these and other factors to determine whether a restitution award would support rehabilitation in this particular case. The trial court's implicit conclusion that the award would assist in preventing future criminality is fully supported by the record.

We also reject Olier's reliance on the court's comments regarding his *Harvey* waiver. Read in context, the court's comments show that the court understood that a *Harvey* waiver means the defendant has agreed that the court may consider facts underlying the dismissed or uncharged counts. (See *In re Josh W.* (1997) 55 Cal.App.4th 1, 4, fn. 2.) The court's comments do not suggest that it believed that Olier was directly involved with the unlawful taking or driving of the vehicle.

DISPOSITION

Order affirmed.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

O'ROURKE, J.